

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CANDIDO ALVA DIAZ, Institutional ID No. 21455-047,	§	
	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO.
v.	§	5:13-CV-00130-C
	§	
KERRY DIXON, Warden, Giles W. Dalby Correctional Facility, <i>et al.</i> ,	§	
	§	
	§	
Defendants.	§	ECF

ORDER

Plaintiff Candido Alva Diaz, acting *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983 on May 30, 2013, and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(b). Plaintiff alleges that Defendants were deliberately indifferent to his serious medical needs when he was incarcerated in the Giles W. Dalby Correctional Facility¹, a private prison operated by the Management Training Corporation that contracts with the United States Bureau of Prisons to house federal prisoners. Plaintiff seeks declaratory and injunctive relief and monetary damages. The Defendants have not filed an answer.

On July 26, 2013, the instant complaint was transferred to the docket of the United States Magistrate Judge, who on September 11, 2013, ordered the Dalby facility to provide authenticated copies of any prison records relevant to Plaintiff's complaint. On December 3, 2013, the Magistrate Judge ordered Plaintiff to complete a questionnaire. Plaintiff filed his response to the questionnaire on January 2, 2014, and the Dalby Facility filed copies of Plaintiff's records on January 17, 2014. Because Plaintiff failed to consent to the jurisdiction of the Magistrate Judge, she completed the preliminary screening pursuant to 28 U.S.C. §§ 1915 and 1915A, filed a Report and Recommendation on January 29, 2014, and transferred the complaint back to this Court. Plaintiff did not file a reply or objections to the Report and Recommendation.

¹Plaintiff was released from the Dalby Facility on June 21, 2013. *See Exhibit I*, attached.

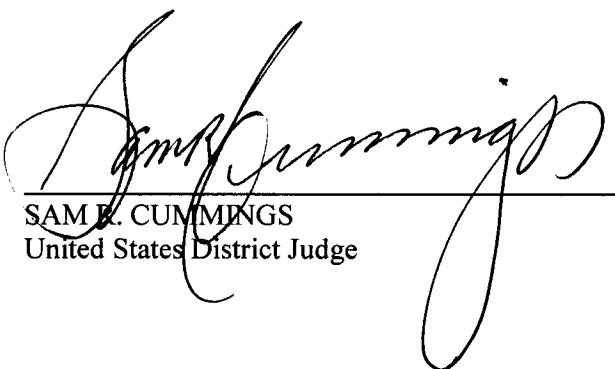
The undersigned District Judge has made an independent examination of the record in this case and finds that the Magistrate Judge's findings and conclusions should be ADOPTED.

It is, therefore, **ORDERED**:

- (1) Civil Action No. 5:13-CV-00130-C and all claims alleged therein are DISMISSED with prejudice as frivolous and for failure to state a claim.
- (2) Any pending motions are DENIED.
- (3) This dismissal shall count as a qualifying dismissal under 28 U.S.C. § 1915 and *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).
- (4) The dismissal of Plaintiff's complaint does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See* 28 U.S.C. § 1915(b)(1) ("Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in *forma pauperis*, the prisoner **shall be required to pay the full amount of a filing fee.**"") (emphasis added); *Hatchet v. Nettles*, 201 F.3d 651, 654 (5th Cir. 2000) ("No relief from an order directing payment of the filing fee should be granted for a voluntary dismissal.").
- (5) Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$505.00 pursuant to the PLRA, and he must submit an application to proceed *in forma pauperis* and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

Judgment shall be entered accordingly.

Dated May 1, 2014.



SAM E. CUMMINGS
United States District Judge

EXHIBIT I

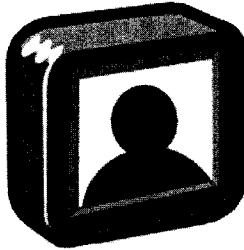
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[Find By Number](#)[Find By Name](#)

Type of Number

Number

 Result using number **21455-047**

CANDIDO ALVA-DIAZ

Register Number: 21455-047

Age: 39
Race: White
Sex: Male

Released On: 06/21/2013

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